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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1904.

No. ~~405~~. 151

MAGGIE A. BRADFORD
vs.
SOUTHERN RAILWAY COMPANY

ON A CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

STATEMENT AND BRIEF FOR PLAINTIFF IN ERROR.

JAMES GALLAGHER,
FREDERIC D. McKENNEY,
Attorneys for Maggie A. Bradford.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1903.

No. 496.

MAGGIE A. BRADFORD
VS.
SOUTHERN RAILWAY COMPANY.

ON A CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

STATEMENT AND BRIEF FOR PLAINTIFF IN ERROR.

This suit was commenced in the Circuit Court of Shelby County, Tennessee, by plaintiff in error against defendant in error to recover ten thousand dollars as damages for the negligent killing of her husband.

The statutes of Tennessee give the widow a right of action in such cases for the loss of the husband, to be prosecuted in her own name, and for her own benefit, and authorize the prosecution of the suit in *forma pauperis*.

The case was removed by defendant in error to the Circuit Court of the United States at the city of Memphis, upon the ground of the non-residence of defendant in Tennessee.

After pleas filed in the latter court a trial was had,

resulting in a verdict and judgment in favor of defendant in error.

Upon examination of the record containing a bill of exceptions, the trial judge granted plaintiff in error a writ of error to the United States Circuit Court of Appeals for the Sixth Circuit, in *forma pauperis*.

Upon lodging the transcript of the record in the case with the clerk of the Circuit Court of Appeals, the clerk, in view of the case of Galloway v. Fort Worth Bank, reported in 186 U. S. S. Reports 177, declined to docket the case without a deposit of $35.00, or security being given for taxable costs.

Then plaintiff in error presented her sworn petition, accompanied with a transcript of the record in the case, to the Circuit Court of Appeals for said circuit, praying that the clerk be directed to docket the case and that she be allowed to proceed with the case in *forma pauperis*.

The Court of Appeals being in doubt, has certified a statement to this Honorable Court for instructions upon the following matters:

First. As to the authority of the Circuit Court of Appeals to allow the case to proceed in *forma pauperis*, under the act of congress of July 20, 1892, 27 Statutes at Large 272.

Second. As to the authority of the court to allow the case to proceed in *forma pauperis*, independent of statute, in meritorious cases.

ARGUMENT.

The Circuit Court of Appeals, before the Galloway case was called to its attention, assumed, by Rule 16, to allow the prosecution of appellate proceedings in meritorious cases in *forma pauperis;* but, in view of the Galloway case, the court has expressed doubts of its authority to allow appellate proceedings to the prosecuted in *forma pauperis.*

It is respectfully submitted for plaintiff in error that inasmuch as the case at bar was removed to the Circuit Court, it is to be considered, for all purposes, as having originated in said court, thus distingushing it from the Galloway case, which arose in a State court. The former case is within the equity of the act of congress.

Fuller v. Montague, 53 Federal Reporter 206.

The only case to the contrary is The Presto, 93 Federal Reporter 522.

The Tennessee statute which authorized the commencement of this case in *forma pauperis* in the State court is narrower in its terms and seemingly more restricted in scope than the act of congress upon the same subject, nevertheless it has been construed by the Supreme Court of that State to extend to the prosecution of appellate proceedings.

Philips v. Rudle, 1 Yerger R. 121.
Brinkley v. Hayworth, 3 Yerger 421.
Mosley v. Davenport, 6 Lea 80.
2 Heiskell 634.

It is respectfully submitted that, inasmuch as the trial judge granted the writ of error in *forma pauperis*, and the Circuit Court of Appeals has certified the statement and questions to this Honorable Court for instructions, a *prima facie* meritorious case is shown, at least within the equity of the act of congress, if not within its letter.

II.

Independent of any statute, the Circuit Court of Appeals possesses inherent power to allow the prosecution of a writ of error in *forma pauperis* in any case wherein there might otherwise be a failure of justice.

Bland v. Lamb, 2 Jac. & W. 402, per Lord Elden, cited in 95 Federal Reporter 345.

It is respectfully submitted that if the act of congress of July 20, 1892, does not apply to appellate proceedings, it is nevertheless within the discretionary power of the Circuit Court of Appeals to allow plaintiff in error, for cause shown, to prosecute her writ of error in *forma pauperis*.

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